

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GERRY JOHNS,
CDCR # C-38404

Plaintiff,

vs.

G.J. JANDA; D. HJERPE;
J. ZAMORA,

Defendants.

Civil No. 13cv1934 MMA (KSC)

ORDER:

**(1) GRANTING MOTION TO
PROCEED *IN FORMA*
PAUPERIS;**

[Doc. No. 2]

**(2) DISMISSING ACTION FOR
FAILING TO STATE A CLAIM
PURSUANT TO 28 U.S.C.
§§ 1915(e)(2)(B) & 1915A(b)**

Plaintiff, a state inmate currently incarcerated at Calipatria State Prison located in Calipatria, California, and proceeding pro se, has filed a civil rights Complaint pursuant to 42 U.S.C. § 1983. Plaintiff has also filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See* Doc. No. 2.

I. MOTION TO PROCEED IFP

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party’s failure to pay only if the party is granted leave to proceed IFP pursuant to 28 U.S.C. § 1915(a). *See*

1 *Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d
 2 1176, 1177 (9th Cir. 1999). Prisoners granted leave to proceed IFP however, remain
 3 obligated to pay the entire fee in installments, regardless of whether the action is
 4 ultimately dismissed for any reason. *See* 28 U.S.C. § 1915(b)(1) & (2).

5 The Court finds that Plaintiff has submitted an affidavit which complies with 28
 6 U.S.C. § 1915(a)(1), and that he has attached a certified copy of his trust account
 7 statement pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2. Plaintiff's trust
 8 account statement shows that he has insufficient funds from which to pay an initial partial
 9 filing fee.

10 Accordingly, the Court **GRANTS** Plaintiff's Motion to Proceed IFP [Doc. No. 2]
 11 and assesses no initial partial filing fee per 28 U.S.C. § 1915(b)(1). However, the Court
 12 further orders the Secretary of the California Department of Corrections and
 13 Rehabilitation ("CDCR") to garnish the entire \$350 balance of the filing fees owed in this
 14 case, collect and forward them to the Clerk of the Court pursuant to the installment
 15 payment provisions set forth in 28 U.S.C. § 1915(b)(1).

16 **II. SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

17 The Prison Litigation Reform Act ("PLRA")'s amendments to 28 U.S.C. § 1915
 18 also obligate the Court to review complaints filed by all persons proceeding IFP and by
 19 those, like Plaintiff, who are "incarcerated or detained in any facility [and] accused of,
 20 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or
 21 conditions of parole, probation, pretrial release, or diversionary program," "as soon as
 22 practicable after docketing." *See* 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b). Under these
 23 provisions, the Court must sua sponte dismiss any prisoner civil action and all other IFP
 24 complaints, or any portions thereof, which are frivolous, malicious, fail to state a claim,
 25 or which seek damages from defendants who are immune. *See* 28 U.S.C.
 26 §§ 1915(e)(2)(B) and 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en
 27 banc) (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 n.1 (9th Cir. 2000) (§ 1915A).

28 To state a claim under § 1983, Plaintiff must allege that: (1) the conduct he

1 complains of was committed by a person acting under color of state law; and (2) that
 2 conduct violated a right secured by the Constitution and laws of the United States.
 3 *Humphries v. County of Los Angeles*, 554 F.3d 1170, 1184 (9th Cir. 2009) (citing *West*
 4 *v. Atkins*, 487 U.S. 42, 48 (1988)).

5 Here, the first page of Plaintiff's Complaint indicates an intent to sue Defendants
 6 Janda, Hjerpe and Zamora, who are all purported to be prison officials at Calipatria State
 7 Prison, pursuant to 42 U.S.C. § 1983. However, the remaining pages filed by Plaintiff
 8 only contain pages for a Petition for Writ of Habeas Corpus and exhibits pertaining to
 9 Plaintiff's disciplinary action while incarcerated at Kern Valley State Prison. The papers
 10 filed by Plaintiff, other than the first page, fail to address any claims against Defendants
 11 Janda, Hjerpe or Zamora or any allegations relating to Plaintiff's conditions of
 12 confinement. Accordingly, the Court DISMISSES the entire action for failing to state a
 13 claim pursuant to 42 U.S.C. § 1983.

14 The Court will grant Plaintiff leave to file an Amended Complaint but he must
 15 present factual allegations relating to alleged constitutional violations arising from his
 16 incarceration at Calipatria State Prison.

17 **III. CONCLUSION AND ORDER**

18 Good cause appearing,

19 1. The Court **GRANTS** Plaintiff's Motion to proceed IFP pursuant to 28
 20 U.S.C. § 1915(a) [Doc. No. 2].

21 2. The Secretary of California Department of Corrections and Rehabilitation,
 22 or his designee, shall collect from Plaintiff's prison trust account the \$350 balance of the
 23 filing fee owed in this case by collecting monthly payments from the account in an
 24 amount equal to twenty percent (20%) of the preceding month's income and forward
 25 payments to the Clerk of the Court each time the amount in the account exceeds \$10 in
 26 accordance with 28 U.S.C. § 1915(b)(2). **ALL PAYMENTS SHALL BE CLEARLY**
 27 **IDENTIFIED BY THE NAME AND NUMBER ASSIGNED TO THIS ACTION.**

28 3. The Clerk of the Court is directed to serve a copy of this Order on Jeffrey

1 Beard, Ph.D., Secretary, California Department of Corrections and Rehabilitation, 1515
2 S Street, Suite 502, Sacramento, California 95814.

3 4. The Court **DISMISSES** Plaintiff's Complaint without prejudice pursuant
4 to 28 U.S.C. § 1915(e)(2)(b) and § 1915A(b). However, the Court **GRANTS** Plaintiff
5 forty five (45) days leave from the date this Order is "Filed" in which to file a First
6 Amended Complaint which cures all the deficiencies of pleading noted above. Plaintiff's
7 Amended Complaint must be complete in itself without reference to the superseded
8 pleading. *See* S.D. Cal. Civ. L. R. 15.1. Defendants not named and all claims not re-
9 alleged in the Amended Complaint will be deemed to have been waived. *See King v.*
10 *Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

11 5. The Clerk of Court is directed to mail Plaintiff a copy of a Court approved
12 civil rights complaint form.

13 **IT IS SO ORDERED.**

14 DATED: September 10, 2013



Hon. Michael M. Anello
United States District Judge